

December 26, 2017

Mr. Clint Huhra
Montrose Avenue LLC
2344 York Rd.
Timonium MD 21093

Re: Montrose Farms Lots 108-112
Montrose Avenue, 21221
Critical Area Administrative Variance
Tracking No. 07-17-2584

Dear Mr. Huhra:

The Department of Environmental Protection and Sustainability (EPS) has completed a review of the variance request for the proposed development on the above referenced property. The property is located within an Intensely Developed Area in the Chesapeake Bay Critical Area. The request proposes to impact 2,838 square feet of the Critical Area buffer for construction of a dwelling, attached garage, porch, driveway, practical yard area, and associated infrastructure. Also, the request proposes the reduction of the 35-foot primary structure setback to 17-feet at the southwest corner of the proposed dwelling. There are no proposed direct impacts to streams or wetlands, but forest will be impacted.

The Director of EPS may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in an unwarranted hardship. These lots existed prior to the Critical Area law. Buffers for the protection of tidal waters, wetlands, and a stream cover the majority of the platted lots and part of the access area. The development proposal minimizes the buffer impacts by siting the dwelling and other structures in the northeastern area of the property adjacent to the access area where the majority of the dwelling is outside the required buffer and buffer setback. Literal enforcement of the regulations would not allow for construction of a practical dwelling, attached garage, porch, driveway, practical yard area, and associated infrastructure on this grandfathered property. Based on this, special conditions do exist that are peculiar to this site, and literal enforcement of the regulations would result in an unwarranted hardship. Therefore, the first criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. Owners of property in the Critical Area with similar proposed residential uses and similar site constraints enjoy property uses like those proposed in this application. Literal enforcement of the regulations would deprive the owner from practical residential uses. Therefore, the second criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. The proposed impacts to the Critical Area buffer for construction of a dwelling, attached garage, porch, driveway, practical yard area, and associated infrastructure on the referenced property would not be denied to similar properties with similar constraints in the Critical Area. Therefore, the third criterion has been met.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. There has been no development activity performed on the property, and this variance request is not the result of existing or proposed uses on any neighboring properties. Therefore, the fourth criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. The impacts to the buffer have been minimized to the extent possible for the construction of a practical dwelling, attached garage, porch, driveway, practical yard area, and associated infrastructure on this property. These impacts are located in the northeastern corner of the property with the majority of construction outside the buffer. This location limits the impacts to those needed for driveway access, some practical yard area, and a primary structure buffer setback reduction. Mitigation will be required for the buffer impacts and for all forest impacts. In addition, because the property is located within an Intensely Developed Area, the development must meet 10% pollutant reduction requirements. A Critical Area Easement will be recorded in Baltimore County Land Records with protective covenants, conditions, and restrictions for protection of the remainder of the property. Therefore, the buffer impacts to allow for the proposed residential uses will result in minimal adverse impacts to plants or wildlife. Granting of this variance will be in harmony with the spirit and intent of the Critical Area regulations, and this fifth criterion can be met with mitigation.

Based upon our review, this Department finds that the first four of the above criteria have been met, and that the fifth criterion can be met by meeting mitigation requirements for the buffer and forest impacts. Therefore, the requested variance is

hereby approved in accordance with Section 33-2-205 of the Baltimore County Code with the following conditions:

1. The following note must appear on all plans associated with this project:

"On December 26, 2017, a variance was granted by the Baltimore County Department of Environmental Protection and Sustainability from Baltimore County Code Article 33, Title 2 Chesapeake Bay Critical Areas Protection to impact 2,838 square feet of the Critical Area buffer and to reduce the 35-foot primary structure setback to 17-feet in the southwest corner of the dwelling for construction of a dwelling, attached garage, porch, driveway, practical yard area, and associated infrastructure. Conditions were placed on this variance to reduce water quality impacts. Any revisions to this proposal, or any new development involving buffer impacts will require a new variance application for review".

2. Mitigation for approved impacts shall be provided as follows:

The 2,838 square feet of Critical Area buffer impacts shall be mitigated at a rate of 3:1 resulting in a buffer mitigation requirement of 8,514 square feet. The 7,601 square feet of forest clearing outside the buffer shall be mitigated at a rate of 1:1. In addition, information on how the development will meet the 10% pollutant reduction requirement must be detailed in the Critical Area buffer management plan. Because there is no opportunity to provide buffer and forest mitigation on-site, mitigation must be provided at an EPS approved off-site location or by the payment of a fee-in-lieu to Baltimore County. Based on the above figures, the fee-in-lieu for buffer impacts would be \$12,771.00 (\$1.50 per square foot) and the fee for forest clearing would be \$3,800.50 (\$0.50 per square foot). Required mitigation fees will be finalized in the review of the required Critical Area management plan depending on any revisions to the forest clearing proposed or mitigations options chosen. See condition #3 below.

3. A Critical Area management plan outlining the required and proposed mitigation, and how the development will meet the 10% pollutant reduction requirement, must be submitted to EPS for review. This plan must be approved and all fees, and any securities, paid prior to any permit approvals.
4. Mitigation and 10% pollutant reduction requirements shall be completed prior to dates established on the Critical Area management plan
5. Critical Area "Do Not Disturb" signs shall be installed at the locations shown on the approved Critical Area management plan. This requirement must be completed prior to permit approval. This note must be added to the Critical Area management plan (see enclosure for sign specifications).

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6. A Critical Area Easement must be recorded in Baltimore County Land Records along with the appropriate declarations of protective covenants, conditions, and restrictions. Please contact EPS to discuss the procedures required to meet this requirement for this property.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request. Please be advised that Baltimore County may not issue a permit for the activity that was the subject of the variance application until 30 days after variance approval, pursuant to Natural Resources Article § 8-1808(d)(6)(ii).

The property owner(s) must sign the statement at the end of this letter, and then return the signed letter to this Department. Failure to return a signed copy of this letter may result in delays in processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Paul Dennis at 410-887-3980.

Sincerely,

David V. Lykens
Deputy Director

DVL: pad

Enclosures: A- Sign Specifications

c: Claudia Jones, Critical Area Commission
Charles Brenton, Brenton Landscape Architecture LLC

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Baltimore County Code Article 33. Environmental Protection And Sustainability, Title 2 Chesapeake Bay Critical Areas Protection.

Property Owner Signature(s)	Date
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Property Owner Printed Name(s)